



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

June 24, 1985

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To the President of the Senate and the  
Speaker of the House of Representatives

This letter reports a deferral of General Services Administration (GSA) budget authority that should have been, but was not, reported to the Congress by the President pursuant to the Impoundment Control Act of 1974.

Section 1015(a) of the Impoundment Control Act (2 U.S.C. § 686(a)) requires the Comptroller General to report to the Congress whenever he finds that the President, the Director of the Office of Management and Budget (OMB), the head of any department or agency of the United States, or any other officer or employee of the United States has ordered, permitted, or approved the establishment of a reserve or deferral of budget authority, and the President has failed to transmit a special message with respect to such reserve or deferral. This report is submitted in accordance with the requirement imposed by section 1015(a) and under that section has the same effect as if it were a deferral message transmitted by the President.

The deferral in question occurs in the National Defense Stockpile Transaction Fund. This fund was established by Congress in 1979 to provide for the acquisition of certain strategic and critical materials, in order to preclude the dependency of the United States upon foreign sources for supplies of such materials in times of national emergency. Generally, the moneys received from the sale of materials in the National Defense Stockpile are deposited into the Fund. These receipts are to remain in the Fund until appropriated by Congress for the acquisition of strategic and critical materials (and for transportation related to such acquisition). 50 U.S.C. § 98h (1982).

For fiscal year 1985, the Continuing Resolution (Pub. L. 98-473) incorporated a provision in the conference version of the Treasury, Postal Service and General Government Appropriations bill which provides that up to \$185 million, in addition to amounts previously appropriated (all to remain available until expended) may be obligated from amounts in the National Defense Stockpile Transaction Fund.

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The budget authority for this account is created only when the Congress appropriates the cash receipts (both earned and anticipated) deposited into the Fund, since these receipts must remain in the Fund (and hence are not available for expenditure) until appropriated. 50 U.S.C. 98h. The apportionment schedule for this account, dated November 7, 1984, indicates that a total of \$224 million in obligational authority (made up of an unobligated balance brought forward of \$39 million and the 1985 appropriation of \$185 million) was apportioned in full over the first two quarters of this fiscal year. According to GSA, the funds were apportioned in this manner to preserve maximum flexibility in making purchases, based upon acquisition priorities and current market conditions. GSA advised us that the Fund currently contains \$207.9 million in unobligated receipts.

Despite the availability of \$224 million in obligational authority and currently estimated unobligated receipts of \$207.9 million, GSA, according to figures it supplied, has obligated only \$9.2 million from the fund since October 1984 and has made virtually no acquisitions in the last 4 months. The primary reason GSA asserts for its failure to acquire strategic and critical materials since January 1985 is that it was advised at that time by the National Security Council (NSC) to refrain from making any acquisitions until a stockpile goals study, initiated by NSC in late 1983, is completed and the results are promulgated. GSA anticipates that, depending on the results of the study, the previously established acquisition goals may require revision. GSA feels it is more prudent to delay its acquisitions until then.

Notwithstanding the reasons that may support GSA's decision to refrain temporarily from further obligations of the fund's obligational authority, the conscious decision to cease making acquisitions of strategic and critical materials pending the completion and release of the NSC study constitutes a deferral which should be reported to Congress under the Impoundment Control Act.

According to section 1011 of the Impoundment Control Act (2 U.S.C. § 582), a "deferral of budget authority" includes:

"(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority . . . ."

In the President's budget, OMB's practice has been to exclude receipts deposited in the Fund from budget totals. Rather than referring to these receipts as "budget authority", OMB calls them "offsetting collections." However, the fact that these funds do not appear under the "budget authority" heading in the President's budget does not mean that the Fund does not contain budget authority for purposes of reporting impoundments under the Impoundment Control Act. See B-211398, July 24, 1984. These receipts are not available until appropriated. In our view, to the extent that Congress has made the funds available for obligation in appropriation provisions, there is available budget authority in the Fund. The portion of this budget authority which could be obligated at present for acquisitions, but has not been (due to the decision to await the NSC study) is the subject of this deferral.

The stockpile acquisitions are made in accordance with an Annual Materials Plan (AMP), which is an annual list of acquisition and disposal actions for stockpile materials. The AMP is initiated by the Federal Emergency Management Agency (FEMA) and GSA, and is subsequently reviewed by an interagency AMP steering committee, NSC, and FEMA. Finally, the AMP is submitted to the House and Senate Armed Services Committees. No action is required on the part of these two committees in order for the acquisitions contained in the AMP to commence. 50 U.S.C. § 98h-2(b).

At present there are two AMP's from which acquisitions could be made. GSA advises us that there are acquisitions totalling about \$50 million which could still be made from the AMP submitted for fiscal 1984. There are acquisitions totalling \$120 million which are contained in the fiscal year 1985 AMP (submitted to the committees in February 1984). An AMP for fiscal year 1986 has not yet been submitted. Consequently, it appears that, if GSA were making acquisitions with the available obligational authority, it could purchase about \$170 million worth of materials for the stockpile. From the figures provided us by GSA, the Fund contains sufficient

receipts at present to support these acquisitions.<sup>1/</sup> Therefore, in the absence of any legal impediment to making these purchases, the approximate amount of obligational authority subject to this impoundment is at least \$170 million.

We considered and rejected the notion that GSA's decision not to make further acquisitions for the stockpile at least until release of the NSC study is a delay which is programmatic in nature, and hence not truly an impoundment. Obligation of this budget authority has been voluntarily halted. Completion of the NSC study is not a prerequisite, either legally or as a practical matter, to the continued execution of stockpile transactions. (If the cessation of acquisition were an absolute necessity pending completion of the NSC study, then it should have occurred at the time the study was started, early in fiscal year 1984, rather than just 4 months ago. However, in fiscal year 1984, approximately \$108,949,000 was obligated by GSA for stockpile acquisitions.)

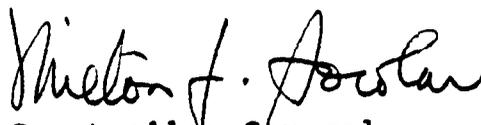
Although proceeding with the previously planned acquisitions may not be the most expedient course of action from GSA's perspective (since the results of the study may require some adjustments to the stockpile's content), it is by no means an impossible course of action, as demonstrated by the acquisitions made in fiscal year 1984. Additionally, there is no certainty as to when the results of the NSC study will be released, and even less certainty as to when an AMP taking these results into account will be prepared, reviewed, and

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<sup>1/</sup> We are aware that the Administration has proposed legislation to repeal retroactively section 905 of the Department of Defense Authorization Act of 1985. Section 905 directs the deposit of 30 percent of all moneys accruing to the United States, during fiscal year 1985, from lands in the naval petroleum and oil shale reserves into the Stockpile Transaction Fund. If the proposed repeal were enacted, the Fund's other resources might be insufficient to support \$170 million in acquisitions. However, in the absence of such legislation, we regard these Naval Petroleum Reserve receipts as available for obligation and expenditure for stockpile purchases (to the extent authorized in the appropriation provision).

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submitted to the congressional committees. For these reasons, we conclude that the decision to refrain from making any acquisitions until such time constitutes a deferral reportable under the Impoundment Control Act.

A handwritten signature in cursive script, reading "Milton F. Jordan".

Acting Comptroller General  
of the United States